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Kim Dockstader, ISB No. 4207  
Gregory C. Tollefson, ISB No. 5643  
STOEL RIVES LLP  
101 South Capitol Boulevard, Suite 1900  
Boise, ID 83702-5958  
Telephone: (208) 389-9000  
Fax Number: (208) 389-9040  
kdockstader@stoel.com  
gctollefson@stoel.com

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CAMILLE WOODWORTH  
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Attorneys for Defendant Micron Electronics, Inc.

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF IDAHO

KIMBERLEY SMITH, MICHAEL B.  
HINCKLEY, JACQUELINE T.  
HLADUN, MARILYN J. CRAIG,  
JEFFERY P. CLEVINGER, and  
TIMOTHY C. KAUFMANN, individually  
and on behalf of those similarly situated,

Plaintiffs,

v.

MICRON ELECTRONICS, INC., a  
Minnesota corporation,

Defendant.

Case No. CIV 01-0244-S-BLW

**DEFENDANT MICRON ELECTRONICS,  
INC.'S MOTION TO STRIKE  
CONSENTS AND DISMISS CLAIMANTS  
DESTINY J. BAXTER, DON HOPKINS  
AND CAMILLE WOODWORTH**

Defendant Micron Electronics, Inc. ("Defendant"), by and through its attorneys, Stoel Rives LLP, pursuant to Rules 37(b)(2), 37(d) and 41(b) of the Federal Rules of Civil Procedure, and the Court's inherent power, respectfully moves for an Order striking the consents and dismissing claimants Destiny J. Baxter, Don Hopkins and Camille Woodworth.

**DEFENDANT MICRON ELECTRONICS, INC.'S MOTION TO STRIKE  
CONSENTS AND DISMISS CLAIMANTS DESTINY J. BAXTER, DON  
HOPKINS AND CAMILLE WOODWORTH – 1**

This motion is supported by the Affidavit of Kim Dockstader ("Dockstader Aff.") filed concurrently herewith.

Ms. Baxter, Mr. Hopkins and Ms. Woodworth each filed a Consent to Join Collective Action in this case. (Dockstader Aff. ¶ 2.) Each of these consents should be stricken for the reasons stated in this Motion, resulting in the dismissal of each of these claimants.

At the deposition of Ms. Baxter on July 6, 2004, she admitted under oath that she was not an inside sales representative at any time between June 1, 1998 and May 31, 2001 and is therefore not a member of the putative class. (Dockstader Aff. ¶ 3) Defendant therefore requests that claimant Destiny J. Baxter be dismissed pursuant to the Court's inherent power and the Court's Memorandum Decision and Order of September 27, 2002 (Docket No. 155) in which the Court defines the class as: "All hourly-wage *inside sales representatives* who worked for MPC, MCCS, or MGCS . . ." (Memorandum Decision and Order, p. 5.) (Emphasis added.) Plaintiffs' counsel have indicated they will not oppose dismissal of Ms. Baxter for this reason.


Defendant requests that claimants Don Hopkins and Camille Woodworth be dismissed pursuant to Rules 37(b)(2), 37(d) and 41(b) of the Federal Rules of Civil Procedure, and the Court's inherent power, because these claimants have not pursued this action, they have refused to be deposed and/or they have failed to appear at their depositions, and therefore, they are subject to involuntary dismissal from this action. Plaintiffs' counsel has indicated that they will not oppose the dismissal of these claimants pursuant to this Motion, subject to counsel's ability to confirm certain file information relating to their identity. (Dockstader Aff. ¶¶ 4-5.)

As indicated, it is anticipated that Plaintiffs will not oppose the relief sought by this Motion. Defendant therefore respectfully moves the Court to grant such relief as soon as practicable. A proposed Order is submitted with this Motion for consideration by the Court.

The claimants' failure to cooperate with discovery has increased the costs associated with this litigation. Defendant, therefore, reserves its right to seek costs and attorneys' fees, and any other sanctions as may be appropriate under the circumstances.

DATED this 23<sup>rd</sup> day of July, 2004.

STOEL RIVES LLP



Kim Dockstader

Attorneys for Micron Electronics, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 13<sup>th</sup> day of July, 2004, I caused to be served a true copy of the foregoing **DEFENDANT MICRON ELECTRONICS, INC.'S MOTION TO STRIKE CONSENTS AND DISMISS CLAIMANTS DESTINY J. BAXTER, DON HOPKINS AND CAMILLE WOODWORTH** by the method indicated below, and addressed to each of the following:

William H. Thomas  
Daniel E. Williams  
Christopher F. Huntley  
HUNTLEY PARK LLP  
250 South 5th Street  
P.O. Box 2188  
Boise, Idaho 83701-2188

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<input type="checkbox"/>	Hand Delivery
<input type="checkbox"/>	Overnight Delivery
<input checked="" type="checkbox"/>	Facsimile

  
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Kim Dockstader

**DEFENDANT MICRON ELECTRONICS, INC.'S MOTION TO STRIKE  
CONSENTS AND DISMISS CLAIMANTS DESTINY J. BAXTER, DON  
HOPKINS AND CAMILLE WOODWORTH – 4**